

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 26, 2007

ALAN RAY HALL v. HOWARD CARLTON, WARDEN

Appeal from the Criminal Court for Johnson County
No. 4890 Robert E. Cupp, Judge

No. E2007-00458-CCA-R3-HC - Filed October 29, 2007

The petitioner, Alan Ray Hall, was denied the writ of habeas corpus by the Johnson County Criminal Court based upon his claim that his life sentence is void because he was erroneously advised that he would be eligible for release after twenty-five years. Upon review, we hold that the trial court properly determined that the petitioner's claim was not cognizable in habeas corpus proceedings. We affirm the trial court's order dismissing the claim.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which THOMAS T. WOODALL and D. KELLY THOMAS, JR., JJ., joined.

Alan Ray Hall, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Cameron L. Hyder, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

The petitioner was convicted in 1996 of first degree murder, especially aggravated robbery, aggravated burglary, and theft of property valued at \$1,000 but less than \$10,000. He received an agreed sentence, the effective length of which is life plus twelve years. He filed a petition for post-conviction relief, which was dismissed as untimely. The dismissal was affirmed on appeal. Alan Hall v. State, No. E2000-01522-CCA-R3-PC, Sullivan County (Tenn. Crim. App. May 23, 2001), app. denied (Tenn. Oct. 29, 2001). He filed his petition for the writ of habeas corpus in 2006, in which he alleged that he was told by his trial counsel, the district attorney, and the trial court that his life sentence had a twenty-five year release eligibility date. He attached to his petition a transcript of the guilty plea hearing which corroborates this claim. The trial court dismissed the petition on the basis that it stated a claim of a voidable sentence, and only void sentences may be attacked in a petition for the writ of habeas corpus.

The state argues that the appeal should be dismissed because the defendant filed an untimely notice of appeal. See Tenn. R. App. P. 4(a) (requiring filing of notice of appeal within thirty days). The petitioner argues in his reply brief that his notice of appeal was timely because it complies with the so-called “prison mailbox rule.” See Tenn. R. Crim. P. 49(d) (allowing that papers filed under the Rules of Criminal Procedure by incarcerated pro se litigants may be considered filed within the prescribed time if delivered to appropriate prison authority for mailing within the time allowed for filing).

The trial court’s order dismissing the petition was filed in the trial court on January 25, 2007. The certificate of service at the bottom of the petitioner’s notice of appeal states that the notice was placed in the prison mailbox on February 24, 2007, but was not filed by the trial court until February 27, 2007. The petitioner also mailed a notice of appeal to this court, and the envelope in which this court received that notice is stamped as having been received in the prison mailroom on February 23, 2007. This court knows that February 24, 2007, was a Saturday. See Tenn. R. Evid. 201 (judicial notice). The Rules of Appellate Procedure provide that in computing time for filing, if the last day for doing so falls on a Saturday, Sunday, or legal holiday, that day shall not be counted. Tenn. R. App. P. 21(a). Thus, the petitioner’s notice of appeal was timely if it was filed on or before February 26, 2007. Upon consideration, we hold that the petitioner filed a timely notice of appeal by depositing it with prison authorities for mailing on or about February 24, 2007.

In Tennessee, a person who is imprisoned or otherwise under restraint, except for federal prisoners held under the exclusive authority of the federal government without any Tennessee restraint, may prosecute a petition for the writ of habeas corpus to inquire into the legality of the state restraint. T.C.A. §§ 29-21-101, -102; Faulkner v. State, 226 S.W.3d 358 (Tenn. 2007). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W.2d 157, 163 (Tenn. 1993) (citing State ex rel. Newsom v. Henderson, 221 Tenn. 24, 424 S.W.2d 186, 189 (1968)). Habeas corpus relief is available only when it appears on the face of the judgment or the record that the trial court was without jurisdiction to convict or sentence the defendant or that his sentence has expired. Archer, 851 S.W.2d at 164. The burden is on the petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964).

The judgment reflects that the petitioner received a life sentence for first degree murder, a punishment prescribed by statute. See T.C.A. § 39-13-204(a). The judgment properly designates “First Degree Murder” for offender classification, and the judgment does not contain any notation regarding purported terms of the plea agreement relative to release eligibility. The sentence, as imposed by the judgment, is a legal sentence and therefore is not void. See Archer, 851 S.W.2d at 163 (holding that habeas corpus relief is available for relief from void and not voidable judgments).

The allegation that the petitioner was not properly advised of the release eligibility for a life sentence and that he would not have accepted the plea agreement had he known the advice he received was erroneous states a claim of a voidable, not a void, judgment. Douglas L. Brown v. State, No. E2004-02496-CCA-R3-HC, Bledsoe County (Tenn. Crim. App. May 13, 2005) (holding

that “claims of involuntary or unknowing guilty pleas [and] nonconformity of the judgments with the plea agreement . . . would render the judgments voidable and not void”). Although the transcript of the plea submission hearing supports the petitioner’s claim that he was erroneously advised of the release eligibility provision, the other component of his claim is that he would not have pleaded guilty had he known otherwise. “When a petitioner must offer proof beyond the record to establish the invalidity of a conviction, the judgment is merely voidable and not void.” Summers v. State, 212 S.W.3d 251, 258 (Tenn. 2007) (citing State v. Ritchie, 20 S.W.3d 624, 630-31 (Tenn. 2000)).

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

JOSEPH M. TIPTON, PRESIDING JUDGE